

HIGH COURT OF MADHYA PRADESH,

BENCH AT INDORE

MCRC NO.12839/2020

Alka w/o Ashok vs. State of M.P

30.06.2020: (INDORE):

Shri Ajay Jain learned counsel for the applicant.

Shri Prabal Jain learned Panel Advocate for the respondent/State.

Heard learned counsel for the parties through video conferencing.

This is a petition under section 482 Cr.P.C filed against the order dated 13.03.2020 passed by the 19th A.S.J, Indore whereby Criminal Revision has been dismissed affirming the order dated 20.02.2020 passed by learned JMFC, Indore rejecting the application filed under section 437 (6) of Cr.P.C.

Applicant along with other co-accused is facing a criminal trial registered as Criminal Case No.8435/19 for the offence punishable under sections 380 & 457 IPC. She was arrested on 21.07.2019 and the trial court has framed the charges on 26.11.2019. Thereafter, the case was fixed for evidence on 10.12.2019. According to the applicant, not a single witness has been examined in the trial so far. She filed an application under section 437(6) Cr.P.C before the learned JMFC seeking bail on the ground that the trial has not been concluded within a period of 60 days from the first date fixed for taking evidence. The aforesaid application was opposed by the Public Prosecutor and vide order dated 20.02.2020 learned Court has dismissed the application

keeping in view the gravity of the offence and the maximum punishment i.e. 14 years to be imposed for the offence under section 457 IPC.

Being aggrieved by the aforesaid order, the applicant preferred a criminal revision No.88/20. Vide order dated 13.03.2020 learned 19th ASJ has dismissed the revision, hence the present petition before this Court.

Learned counsel for the applicant submits that the provisions of section 437 (6) Cr.P.C are mandatory in nature. The offences are triable by Magistrate, therefore, it was the duty of the Magistrate to conclude the trial within a period of 60 days from the first date fixed for taking evidence and if the trial could not be concluded the applicant is entitled to be released. He further submits that while rejecting the application the Court has not assigned any reason, hence the order is bad in law and liable to be dismissed. In support of his contentions, he has placed reliance over the judgment passed by this Court in the case of Ram Kumar @ Raj Kumar Rathore vs. State of M.P reported in 2000 (1) MPHT 661.

Learned Public Prosecutor appearing for the State opposes the petition by submitting that the learned JMFC, as well as the A.S.J both, have properly appreciated the provisions of section 437 (6) Cr.P.C and rightly rejected the application, hence no interference is called for.

The applicant filed an application under section 437(6) on the ground that the trial has not been completed within 60 days from the first date fixed for taking evidence, hence she is entitled to be released on bail. Section 437(6) Cr.P.C is

reproduced below:

437. When bail may be taken in case of non-bailable offence.—1[(1) *When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of session, he may be released on bail, but—*

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of 2[a cognizable offence punishable with imprisonment for three years or more but not less than seven years

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

It is clear from the aforesaid language that the provision is not mandatory in nature. The accused shall not be released on bail to the satisfaction of the Magistrate unless for the reasons to be recorded in writing declining the bail. As per the aforesaid provision if the Magistrate is not intending to release the applicant under section 437(6) Cr.P.C he is required to assign the reason. In the case of **Devraj Maratha @ Dillu Vs. The State of M.P.** reported in **2018 (2) MPLJ (Cri) 386** the Division Bench of this court

had occasion to consider the interpretation of sub-section (6) of [Section 437](#) of the Code of Criminal Procedure, as the Single Bench by order dated 18-01-2018 has referred the following question for consideration before Double Bench:-

"Whether under the provision of sub-section (6) of [Section 437](#) of the Cr.P.C., it is mandatory for the Magistrate to release the accused on bail, when the trial is not concluded within the period of sixty days, from the first date fixed for taking evidence in the case ?"

Relevant para of the above judgement is as under:-

17. The D.B. considered the case of [Damodar Singh Chouhan vs. State of M.P.](#), 2005 (II) MPWN 138, [Ram Kumar @ Raj Kumar Rathore vs. State of M.P.](#), 2000(2) MPLJ 43, Rajendra son of [Rajaram Pal vs. State of M.P.](#) 2002 (5) MPLJ 301, [Manoj Agrawal vs. State of M.P.](#), 2001(1) MPHT 70 and Aasif @ Nakta Vs. State of M.P., I.L.R. 2016 M.P. 2391 decided by M.P. High Court and [Didar Singh vs. State of Jharkhand](#), 2004 SCC Online Jhar 560 decided by Jharkhand High Court, [Anwar Hussain vs. State of Rajasthan](#), 2006 SCC Online Raj 534 decided by Rajasthan High Court. The D.B. said in para 20 :-

"20. In view of delineation of facts and law elaborated in a greater detail herein-above, we hold that the law laid down in the cases of [Ram Kumar @ Raj Kumar Rathore vs. State of M.P.](#), 2000(2) MPLJ 43; Rajendra son of [Rajaram Pal vs. State of M.P.](#), 2002(5) MPLJ 301; and [Damodar Singh Chouhan vs. State of M.P.](#), 2005 (II) MPWN 138 wherein it has been held that the provisions of [Section 437\(6\)](#) of the Code are mandatory in nature and the accused is entitled for bail, if the trial is not concluded by the Magistrate within the statutory period and the Magistrate will not have any discretion to refuse bail is not a good law and the law laid down in the case of [Aasif @ Nakta vs. State of M.P.](#) (supra) and [Manoj Agrawal vs. State of M.P.](#) (supra) is approved."

"21. In view of preceding analysis and enunciation of law governing the field, the reference is answered as under:

(a) Provision envisaged in sub-section (6) of [Section 437](#) of the Code is mandatory in the sense that the Magistrate is required to exercise his power of granting bail after the statutory period, if the trial is not concluded within that, however, passing of an order under [Section 437\(6\)](#) of the Code is mandatory, but not grant of bail,

(b) The Magistrate is vested with full power to take into consideration -(i) the nature of allegations;(ii) whether the delay is attributable to the accused or to the prosecution; and (iii) criminal antecedents of the accused or any other justifiable reason, while refusing to grant bail.

Therefore, the law has been settled now, the accused becomes entitled to apply for a grant of bail if the trial of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case. But this right is not an absolute right and the Magistrate, for reasons to be recorded in writing, can reject the application even under 437(6) of Cr.P.C.

In the present case, the Magistrate has assigned the reason that the alleged offence is punishable under section 457 of IPC in which the maximum punishment is up to 14 years. The applicant along with others has committed a theft of Rs.75,000/- and the gold articles. Though the offences are triable by Magistrate but not bailable and the maximum punishment can go up to 5 years - 7 years - 14 years respectively, therefore, it cannot be said that the Magistrate has not assigned any reason. Even otherwise this Court has rejected the application filed under section 439 Cr.P.C, hence

no interference is called for in this petition. Accordingly, the petition is dismissed.

(VIVEK RUSIA)
JUDGE

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